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DISTRICT OF COLUMBIA DEPARTMENT OF THE ENVIRONMENT Petitioner, v. SARAH WINSTON & JOSHUA WINSTON Respondents.	Case No.: 2010-DDOE-00032 NOI No.: DE-I-09-1200051

FINAL ORDER

On October 1, 2009, the Government served Notice of Infraction No. DE-I-09-1200051 (the "NOI") upon Respondents Sarah and Joshua Winston ("Respondents"). The NOI alleged that Respondents violated D.C. Official Code § 8-103.02 (the "Statute") by discharging pollutants into the waters of the District without a permit on April 12, 2009, at 7015 Western Avenue, N.W. The Government seeks a fine of $2,000.

On October 19, 2009, the District Department of Environment ("DDOE") filed a Request for Hearing with the Office of Administrative Hearings ("OAH") in response to Respondents' pleas of Deny to the NOI. Consequently, OAH scheduled a hearing for June 1, 2010. On May 24, 2010, Respondents filed a Motion for Continuance, asking that the June 1, 2010 hearing be re-scheduled. Respondents' Motion for Continuance was granted and the hearing re-scheduled for July 1, 2010.

On July 1, 2010, the hearing proceeded as scheduled. Jacob Zangrilli, the DDOE inspector who issued the NOI (the "Inspector"), appeared on behalf of the Government. Joshua Winston appeared on behalf of himself and Respondent Sarah Winston, his sister, as authorized by OAH Rule 2839.1, 1 DCMR 2839.1. At the beginning of the hearing, Respondents withdrew their pleas of Deny and entered pleas of Admit with Explanation. I then heard testimony and argument from both parties concerning Respondents' explanation and request for suspension or reduction of the fine.

Based on the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent Joshua Winston is an accountant by profession and an auto mechanic by avocation. His mechanical specialty, for which he has enjoyed some renown, is modifying gasoline engines to run on vegetable oil usage.

Sometime in 2009, television network CNN invited Mr. Winston to be featured in a fortieth anniversary Earth Day documentary, to be filmed in 2010. In preparation for the documentary, Mr. Winston obtained a recreational vehicle, on which he labored for 60 hours to modify the vehicle's gas powered engine to run on vegetable oil.

On April 12, 2009, the day of the oil spill at issue in this case, CNN filmed Mr. Winston's vegetable oil powered vehicle in the area of 7015 Western Avenue, N.W., where his sister Sarah lives. During the filming, residents and other interested persons gathered to observe. Based on Mr. Winston's unrefuted explanation, one of the spectators accidentally knocked over a

drum of vegetable oil, releasing 5 to 10 gallons of oil, which is the spill at issue in this case. Mr. Winston did not report the spill to the Government, but a resident of the area did so.

In response to the resident's report, the Inspector and other Government response team members investigated the area of the spill on April 15, 2009. Consequently, a sample was collected and analyzed by a laboratory. The laboratory test results indicate the presence of oil and grease in the storm water drain near the spill site. Petitioner's Exhibit ("PX") 101. The Government hired an abatement contractor, who charged the Government $2,428 to clean the spill. PX 121.

For medical reasons unrelated to this incident, Mr. Winston does not plan to convert other cars to vegetable oil usage.

III. Conclusions of Law

The Government has charged Respondents with a violation of D.C. Official Code § 8-103.02, which provides as follows:

> Except as provided in § 8-103.06, no person shall discharge a pollutant to the waters of the District.

The discharges excepted in § 8-103.06 do not apply to in this case; they are limited to certain specific discharges under permit by the Mayor.

Respondents' pleas of Admit with Explanation establish that they violated the Statute on April 12, 2009, as charged in the Notice of Infraction.

The District of Columbia Municipal regulations prescribe a $2,000 fine for a first violation of the Statute, which is the fine amount requested by the Government. 16 DCMR 3644.1 and 16 DCMR 3201.1(a)(1). However, Respondents have requested that the fine be suspended or reduced.

In support of their request for suspension of the fine, Respondents argue that the spilled oil is not a pollutant under the Statute and that the accidental spill does not rise to the level of a discharge. If either of Respondents' arguments persuaded me, I might consider them as complete defenses to the charge and, therefore, suspend the fine. *See DOH v. Jered Facility*, 2003 D.C. Off. Adj. Hear. LEXIS 74 at *2 (Final Order November 11, 2003) (fine suspended where respondent would have a complete defense to the charges); *DOH v. Edwards*, 2005 D.C. Off. Adj. Hear. LEXIS 72 at *4 (Final Order March 4, 2005) (fine suspended where violation resulted from illegal dumping, which respondent could not have reasonably anticipated or prevented); *DOH v. Arts Club of Washington*, 2004 D.C. Off. Adj. Hear. LEXIS 61 at *4 (Final Order November 15, 2004) (fine suspended where but for its plea of Admit with Explanation respondent would have a complete defense to the charge).

However, I find neither argument persuasive. "Oil" is listed as a pollutant in the definition of "pollutant." D.C. Official Code 8-103.01(A)(19). While "oil" is not defined in the Statute or Definitions section found at §103.01, I have deferred to the enforcing agency's plain language interpretation that "oil" includes vegetable oil. As to the argument that the spill was not a discharge because it was accidental, here, too, for the same reasons I defer to the enforcing agency's interpretation, that, in the absence of an accidental or *de minimus* exception in the Statute, a discharge includes an accidental or intentional spill. Deference is given to an administrative agency's reasonable construction of the statutes and regulations it is charged with administering. *See Wright-Taylor v. Howard University Hosp'l*, 974 A.2d 210 (D.C. 2009). If an agency's interpretation is reasonable, even if a petitioner advances a different but reasonable interpretation, the agency's interpretation must be sustained. *Smith v. Dept of Employment Servs.*, 548 A.2d 95, 97 (D.C. 1988); *Brownlee v. Dep't of Health*, 978 A.2d 944 (D.C. 2009).

Here the agency's interpretation comports with the plain language of the Statute, which neither provides an exception for vegetable oil in the definition of pollutants nor an exception for accidental or incidental spills.

For other reasons, however, I will reduce the fine. This administrative court may suspend all or part of a fine for, among other things, past compliance or past good faith attempts to comply with applicable laws and regulations, or upon condition that the respondent correct the infraction by a date certain. D.C. Official Code § 2-1801.03(b)(6). Respondents have demonstrated acceptance of responsibility by entering pleas of Admit with Explanation, but only nominally and fairly late in the case. Additionally, Respondents have explained that the oil spill was accidental. While I credit Mr. Winston's explanation that neither Respondent directly caused the spill, I must also consider that placement of the oil drum in a situation that could lead to a spill was foreseeable and the proximate cause of the spill. However, based on Respondents' acceptance of responsibility, the lack of a history of noncompliance, and the fact that this was an isolated incident unlikely to occur again, I will reduce the fine and impose a reduced fine of $1,000.

This unfortunate incident and the resulting imposition of this fine should not be construed as a failure to recognize the valuable contribution Mr. Winston has made to furthering alternative energy efforts. It is important to note, however, that even ostensibly "clean" sources of energy can have unanticipated and negative effects on our environment if conditions incident to their production and distribution are insufficiently controlled.

Accordingly, it is this _____29th____ day of ____July_____ 2010:

IV. Order

ORDERED, that, based on their pleas of Admit with Explanation, Respondents are **JOINTLY AND SEVERALLY LIABLE** for violating D.C. Official Code § 8-103.02 as charged in the Notice of Infraction; and it is further

ORDERED, that Respondents are hereby assessed, jointly and severally, and shall pay a fine in the total amount of **ONE THOUSAND DOLLARS ($1,000)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount in full within 20 calendar days of the date of mailing of this Order, shall accrue on the unpaid amount at the rate of 1½ %, or portion thereof, starting 20 calendar days after the mailing date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

Signed: July 29, 2010

/s/
Elizabeth Figueroa
Administrative Law Judge